STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT,	)	
Charging Party,	)	Case No. S-CE-125-S
v.	)	PERB Decision No. 648-S
STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION,	)	December 18, 1987
Respondent.	)	

Appearances; Christopher W. Waddell, Attorney for the Department of Personnel Administration; Ernest F. Schulzke, Attorney, for Professional Engineers in California Government.

Before Hesse, Chairperson; Shank and Cordoba, Members.

DECISION

HESSE, Chairperson: This case arose out of the course of bargaining between the State of California, Department of Personnel Administration (DPA or Employer) and the Professional Engineers in California Government (PECG or Union). The bargaining took place in the first half of 1982. During negotiations, PECG filed an unfair practice charge against DPA with the Public Employment Relations Board (PERB or Board), alleging that the Employer was refusing to negotiate various subjects, a violation of the Ralph C. Dills Act.[1] (Gov. Code

[1]Formerly known as the State Employer-Employee Relations Act.

secs. 3512, et seq.) An administrative law judge (ALJ) of this agency heard testimony, and in 1984 a proposed decision was rendered. The ALJ ruled in favor of PECG on a number of items, and DPA appealed his ruling. We now affirm in part and reverse in part the decision of the ALJ.[2]

II. FACTUAL SUMMARY

PECG is the exclusive representative for employees designated to Bargaining Unit #9, professional engineers, architects and similar workers. The majority of the bargaining unit members are employed by the Department of Transportation, with the remainder of the employees employed by the Department of Water Resources, the Water Resources Control Board, the Division of Occupational Safety and Health, and other state agencies.

On February 2, 1982, DPA and PECG began bargaining for the first collective bargaining agreement between the parties. In attendance at the majority of bargaining sessions was a representative from the State Personnel Board (SPB). The parties met on 18 occasions, and concluded their negotiations upon reaching agreement on June 23, 1982.

During the negotiations, however, PECG filed an unfair practice charge against DPA, charging that the state had

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[2]Since the present case before the Board involves a narrow and restricted appeal of the ALJ's decision, we do not consider whether an employer may lawfully refuse to bargain about promotions, position allocations and staffing ratios, out-of-class claims, employee designations, and assignments.

violated the Dills Act sections 3519(b) and (c) by refusing to negotiate with PECG concerning eight specific subjects.[3] The eight specific subjects that DPA refused to negotiate about encompassed: (1) contracting-out; (2) discipline procedures; (3) layoffs; (4) promotions; (5) position allocations and staffing ratios; (6) job action interference; (7) out-of-class claims; and (8) employee designations and assignments. Upon issuance of a complaint by the general counsel, DPA answered by way of an admission that it had refused to negotiate those subjects, but raising as a defense that its refusal to negotiate was based upon the "exclusive and constitutional jurisdiction of the State Personnel Board" in those areas. Furthermore, DPA asserted that certain of the subjects that it had refused to negotiate about, while not in the jurisdiction of the SPB were within the state's managerial prerogative and, thus, were outside the scope of negotiation.

III. THE ALJ'S DECISION AND THE EXCEPTIONS THERETO

The ALJ ruled that the Employer must bargain over proposals

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[3]Government Code sections 3519 (b) and (c) state:

> It shall be unlawful for the state to:
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> . . . . . .
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and confer in good faith with a recognized employee organization.

concerning contracting out, promotions, the decision to lay off, disciplinary procedures, job action interference, work preservation, job specification revisions, and out-of-class claims. The state was excused, however, from bargaining over qualifications of supervisors and managers.

On appeal, DPA excepts to the ALJ's findings as to the negotiability of proposals on contracting out, layoffs, job action interference, discipline, and work preservation. PECG did not except to any finding by the ALJ.

IV. THE NEGOTIABILITY OF THE CHALLENGED PROVISIONS

A. Contracting Out

PECG submitted the following language to DPA concerning a proposal to contract out state work:

> Services which can be performed by existing classifications shall be performed by employees in those classifications and shall not be "contracted out" to or performed by the private sector, other public agencies, or other bargaining units. Services shall be contracted out only if PECG is provided sixty days notice in advance of any decision to contract out, a preponderance of the evidence clearly demonstrates that existing classifications are not capable of performing the work (even if additional employees are hired), and it would be more economical to have the services performed by the private sector than to create that capability in state service. If services are contracted out, the employer shall maintain and make public upon request adequate records to justify the contracting out based on the above criteria.

PECG later amended its proposal to include the following language:

> If services are to be contracted out, the state employer shall meet and confer in good faith with the PECG regarding the impact of the contracting out in advance of making or implementing decisions affecting such impact.

DPA responded by stating that the decision to contract out was an issue within management's prerogative, but on May 25 DPA did offer to negotiate the impact of a decision to contract out with PECG.

The ALJ held that DPA had failed to negotiate in good faith on the issue of contracting out. The ALJ relied upon the decisions of PERB in Arcohe Union School District (1983) PERB Decision No. 360; Oakland Unified School District (1983) PERB Decision No. 367; Healdsburg Union High School District, et al. (1984) PERB Decision No. 375. These decisions were based upon the US Supreme Court's decision in Fibreboard Paper Products Corporation v. NLRB (1964) 379 US 203 [57 LRRM 2609]. Relying on private sector precedent, the ALJ ruled that the decision to subcontract was a mandatory subject of bargaining, and that DPA breached its obligations to the exclusive representative when it refused to bargain.

DPA objects to the hearing officer's conclusion that the decision to contract out is negotiable. DPA relies specifically upon two private sector cases: Otis Elevator Company, a wholly owned subsidiary of United Technologies and Local 989 International Union United Automobile, Aerospace and Agricultural Implement Workers of America (1984) 269 NLRB 891 [116 LRRM 1075], issued by the National Labor Relations Board

(NLRB) after the US Supreme Court decided the other case relied upon by DPA, First National Maintenance Corporation v. NLRB (1981) 452 US 666 [107 LRRM 2705]. DPA argues that those cases hold that the decision to contract out is not necessarily automatically a negotiable one, but rather the negotiability depends upon the nature of the decision to be made and the reasoning behind it. A decision to contract out is non-negotiable unless the decision turns upon labor costs. A decision that turns upon a change in the nature and direction of a significant facet of business is not negotiable.

The decision of the NLRB in Otis Elevator, relying upon the decision of the Supreme Court in First National Maintenance Corporation, does not disturb the Fibreboard ruling. Indeed, it reinforces it. But the later two decisions reemphasize that Fibreboard is dependent upon certain factors, specifically, a savings in labor costs being the motivating factor for the decision to subcontract. Significantly, Otis Elevator and First National Maintenance, as well as the original Fibreboard decision, all dealt with a unilateral change in the terms and conditions of employment. In this case, the DPA is being taken to task for refusal to negotiate an initial bargaining proposal. The question is whether the proposal made by the Union is such that it is narrow enough to bring it under the protection of Fibreboard, or whether it is so broad that no duty to negotiate arises because there is no way to tell whether or not the decision to contract out is made for reasons

dependent upon labor costs.

The proposal made by PECG is both comprehensive and broad. The initial statement is that "[s]ervices which can be performed by existing classifications shall be performed by employees in those classifications and shall not be contracted out to or performed by the private sector, other public agencies, or other bargaining units." (Emphasis added.) Such prohibitions are very broad, prohibiting any kind of subcontracting out for any reason.

The second part of the proposal made by PECG does provide for contracting out, but only in the limited circumstance of where PECG has been given 60 days' notice, and where a preponderance of the evidence clearly demonstrates that existing classifications are not capable of performing the work, and it would be more economical to have the services performed by the private sector (emphasis added). Thus, PECG would have the state prohibited from contracting out for any reason other than that employees in existing classifications could not do the work and such contracting out would be more economical. This does not recognize that there may be several other reasons why the employer may not want to perform a particular service, and wishes to contract out. For example, the state might desire to hire a particular private firm for disposal of hazardous waste on grounds that it has better equipment and is more expert than state employees, even though using the outside firm would not be more economical. The state

could have satisfied the first half of the PECG requirement, that is, state employees could not do the work; but it could not satisfy the second half, that is, the work would not be done more economically than having state employees do it. The state would of necessity then be exposing its employees to hazardous waste, and exposing itself to liability, after having concluded that a private employer is better equipped and more willing to take on those risks.

Instructive in the contracting out dilemma is the language of the Supreme Court in First National Maintenance:

> The concept of mandatory bargaining is premised on the belief that collective discussions backed by the parties economic weapons will result in decisions that are better for both management and labor and for society as a whole . . . This will be true, however, only if the subject proposed for discussion is amenable to resolution through the bargaining process. Management must be free from the constraints of the bargaining process to the extent essential for the running of a profitable business . . . bargaining over management decisions that have a substantial impact on the continued availability of employment should be required only if the benefit, for labor-management relations and the collective bargaining process, outweighs the burden placed on the conduct of the business. [107 LRRM 2709, 2710.]

Thus, the issue the Board should focus on is not whether contracting out effects the availability of employment, as it obviously does. Rather, the focus should be on whether the employer has a need for unencumbered decision-making and whether the subject proposed for discussion is amenable to

resolution through the bargaining process. If the decision to be made by this employer on contracting out is based upon considerations other than labor costs, it is difficult to see how the decision would be amenable to collective bargaining. The unions would, of necessity, be involved in decision making beyond their own interests of employee wages and hours. But such is not the function of an exclusive representative, it is the function of management to be concerned with the running of the business. The state, like private employers, is not run collectively by labor and management, but is run by managers.

The state recognizes its obligation to bargain over the effects of subcontracting, no matter what motivation is behind the decision to subcontract. Furthermore, it is obvious under First National Maintenance and Fibreboard that the state would be obligated to negotiate any decision to subcontract that turned on labor costs. But a blanket proposal that prohibits subcontracting, and severely limits the number of reasons why an employer may subcontract, such as the one we have here, is outside the scope of negotiation because it of necessity impinges upon management's right to manage, and does not present a concomitant ability of the union to influence a decision that is not based upon labor costs.

B. Layoffs

PECG proposed the following language concerning layoffs:

> Layoffs shall be implemented only if the state can demonstrate, based on the preponderance evidence (sic), that layoffs

> are necessary because of lack of work or funds. Any dispute regarding justification for layoffs shall be submitted directly to arbitration in conformance with the grievance procedure. The arbitrator's determination shall be final and binding on all parties. Layoffs and bumping rights shall be based exclusively on seniority, rather than subjective management evaluations or other factors. Demoted employees shall have their salaries "red circled." Whenever possible, employees facing layoff or demotion shall be offered positions equivalent in responsibility and salary in the same geographical area. Employees who are laid off shall receive severance pay equal to one month's pay per year (or fraction thereof) of service.

DPA refused to negotiate about the decision to lay off employees, but indicated a willingness to discuss the impact of layoffs on members of the bargaining unit. DPA counter-proposed to PECG's language, essentially providing for notice of layoff and certain recall rights. The parties exchanged several other proposals concerning layoffs, and finally agreed to the inclusion of the following language:

> Layoffs, if required, shall be conducted in accordance with existing laws and regulations.

Based upon the testimony of the witnesses and the briefs submitted by the parties, the ALJ ruled that DPA had refused to negotiate the decision to lay off employees, but had negotiated the impact of any decision to lay off. Furthermore, the ALJ was guided again by the private sector and held that the decision to lay off was a mandatory subject of bargaining. The language used in section 3516 in the Dills Act and in the

National Labor Relations Act (NLRA) section 8(d) in defining scope of representation is similar. As the decision to lay off employees is negotiable in the private sector, he ruled there is a presumption that it is also negotiable in the public sector.

Under a long series of cases, PERB has ruled that an employer does not have a duty to negotiate a decision to lay off employees under the Educational Employment Relations Act (EERA). (See e.g., Healdsburg, supra, p. 15 at footnote 5.) This is based both upon the statutory language found at Education Code section 45308[4] and the application of the three-part test formulated by PERB in Anaheim Union High School District (1981) PERB Decision No. 177. Language similar to Education Code section 45308 is found at Government Code section 19997.[5] DPA argues that, as the two sections are

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[4]Education Code section 45308 reads, in relevant part:

> Classified employees shall be subject to layoff for lack of work or lack of funds. Whenever a classified employee is laid off, the order of layoff within the class shall be determined by length of service. The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first. Reemployment shall be in the reverse order of layoff. . . .

[5]Government Code section 19997 reads:

> Whenever it is necessary because of lack of work or funds or whenever it is advisable in the interests of economy to reduce the staff of any state agency, the appointing power may lay off employees pursuant to this

analogous, the Board should adopt the same reasoning under the Dills Act that it has for EERA, that is, the decision to lay-off is not negotiable but the effects are.

The ALJ rejected this argument because the supersession provisions under EERA and the Dills Act differ. Under EERA, where there is a statute on point, the statute will always hold sway over any negotiated agreement. Under the Dills Act, however, the Legislature has identified specific Government Code sections that can be superseded by a memorandum of understanding (MOU). (Gov. Code sec. 3517.6.) Section 19997 is not one so mentioned. Nonetheless, the ALJ ruled that Government Code section 19997, even though it is not contained in the supersession provision, can be superseded by an MOU. Then, he ruled, DPA violated its duty to bargain in good faith when it refused to discuss layoffs. DPA argues that the ALJ's decision contradicts the plain meaning of the supersession provisions. It further notes that EERA's rule, that the decision to lay off is non-negotiable, is founded not only in Education Code section 45308, but also in the Board's application of the scope-of-bargaining test set forth in Anaheim. In Newman-Crows Landing Unified School District (1982) PERB Decision No. 223, the Board held that the decision

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> article and department rule. All layoff provisions and procedures established or agreed to under this article shall be subject to State Personnel Board review pursuant to Section 19816.5.

to lay off employees, although it unquestionably impacted upon wages, hours, and terms and conditions of employment, was non-negotiable because it was a matter of "fundamental management concern that requires that such decisions be left to the employer's prerogative."

The reasoning that was adopted by the Board in Newman—Crows Landing is applicable here. Although a union has a vested interest in knowing who should be laid off and how a layoff would be implemented, it should not have to be consulted as to why a layoff is occurring. As with our interpretation of Education Code section 45308, which led this Board to its conclusion in Newman-Crows Landing, we similarly conclude that the legislative intent of Government Code section 19997 is clear from its language. It provides even greater managerial discretion than the Education Code. Thus, there can be no doubt that, as under the EERA, the Legislature intended that, under the Dills Act, decisions to lay off remain exclusively with the employer.

Furthermore, the ALJ's attempt to distinguish EERA from the Dills Act based on supersession alone is not convincing. Principles of statutory construction do not allow that which has been omitted from the statute to be included by intuition. In the absence of a supersession provision appended to section 19997, the result reached, and the rationale in support thereof, is improper. (See UC Regents v. PERB (1985) 168 Cal.App.3d 937, 944-45.)

Thus, DPA did not violate its duty to bargain over the provision concerning the decision to lay off.

C. Work Preservation/Transfer Proposal

> PECG initially proposed the following article:
>
> Work duties and functions currently performed by employees in Unit 9 shall not be assigned to other employees. Engineering and closely related activities, functions, and programs shall be supervised and managed by qualified engineers or other classes in the promotional chain of Unit 9 employees (architects, engineering geologists, etc.). Staffing ratios shall not be utilized to restrict promotions.

DPA argues that the transfer of work proposal, like the proposal to contract out, should be governed by the law found in Otis Elevator and First National Maintenance. That is, a decision to transfer work out of a bargaining unit based on a desire to reduce labor costs would be clearly negotiable because it is amenable to the bargaining process. The union can make proposals that would aid management either in going forward with its plan or rescinding its plan because suggestions or concessions made by the union make the transfer of work unnecessary. But the decision to transfer work for reasons other than reduction of labor costs is not amenable to the bargaining process because the union can make no concessions that would alter such a decision. The union could not concede what it does not control, and it does not control all the factors that would go into a decision to transfer work.

DPA's argument does not confront the "work preservation" aspect of this proposal, however. It is well settled that work preservation is a valid subject of bargaining, as noted by a long line of PERB and NLRB cases. Thus, where a transfer of work occurs in a situation that is not an emergency, the union does have a vested right in maintaining what it already has. To excuse the transfer of work merely because of a "policy change" by management would defeat the purpose of collective bargaining, and could easily shelter an employer who artfully chooses his words and ends up gutting an entire bargaining unit of its work on the basis of a policy change.

Thus, to the extent the proposal is for the purpose of preserving unit work, it is negotiable.

D. Assignment of Work During a Job Action (Job Action Interference)"

The proposal made by PECG concerning job action interference reads as follows:

> Bargaining unit employees shall not be ordered or asked to perform the duties of other employees who are engaging in a strike, work stoppage, or other job action.

DPA's first response was that this proposal would not be negotiated because it was in the area of "management prerogative." It later refused to negotiate the above because DPA felt it was outside the scope of representation. The ALJ observed that the question of reassignment to non-bargaining

unit work during a strike by employees outside the bargaining unit is a question of first impression for PERB. The ALJ, however, cited the Board's decision in Alum Rock Union Elementary School District (1983) PERB Decision No. 322, as holding that the transfer of existing functions and duties of one classification to another is within the scope of representation. Changes of that kind, PERB had ruled, did not involve an "overriding managerial prerogative." The ALJ wrote that the question in the instant case was not so much whether the state be permitted to assign any other employees to do the work of striking employees, but rather whether the employer had an obligation to bargain with an employee organization that is not striking concerning work normally done by employees who are striking. DPA argued that it needed flexibility in an emergency situation to be able to assign its employees wherever they were needed.

The ALJ rejected the "emergency situation" argument on the grounds that it was speculative. He relied also on PERB precedent holding that the mere presence of an emergency will not abrogate an employer's obligation to negotiate with an employee organization. (See San Mateo County Community College District (1979) PERB Decision No. 94; San Francisco Community College District (1979) PERB Decision No. 105; and Davis Unified School District, et all (1980) PERB Decision No. 116.) Rather, the presence of an emergency situation is merely a reason to be raised during negotiations as to why such a clause should not be included.

We concur with the ALJ when he notes that, in essence, the state's desire to maintain day-to-day operations in the face of a strike by employees is a legitimate concern, but one that must be negotiated. There is nothing to prevent the state from stating in the negotiations that it will reassign Unit 9 members to the bargaining unit work of another unit, and holding fast to that position. But by refusing to negotiate about any aspect of this subject, DPA foreclosed negotiations that might have led to a satisfactory resolution. Thus, the state breached its bargaining obligation when it refused to negotiate the work assignment of employees during a job action.

The arguments raised by DPA on exception, that is, the state must feel free to move quickly in an emergency and the state has a need to maintain its operations (subjects on which an employee organization could not make substantive bargaining proposals) miss the point. The arguments raised by DPA are negotiating positions, not defenses to why it did not negotiate.

Certainly the concerns of the state are legitimate and valid. But the validity and legitimacy of its position do not mean that the union has less of an interest in not doing work normally performed by employees who are on strike. For a variety of reasons, not the least of which is union solidarity as well as preservation of bargaining unit work, the union has a legitimate interest in not doing work normally performed by striking employees. Thus, its position as proposed is a

reasonable response to those concerns.

On this matter, DPA miscontrues First National Maintenance. The proposal by PECG was applicable only where there was a job action; thus, its scope was narrow. While the state has an interest in seeing that state services are continuously provided by state employees, the reasons advanced by DPA for refusing to bargain PECG's proposals are merely the positions it could have taken during bargaining. The state should have counter-proposed that it retained the right to assign work.

The proposal is negotiable.

E. Discipline

PECG proposed the following language concerning disciplinary procedures:

> Existing procedures and practices shall remain in force, except that all disciplinary actions and probationary rejections shall be submitted to arbitration, rather than a SPB hearing officer. The arbitrator shall be selected in a manner similar to that proposed in the grievance procedure. The decision of the arbitrator shall be final, except that if the arbitrator upholds or reduces the disciplinary action or probationary rejection, his decision shall be reviewed by the State Personnel Board.

DPA refused to negotiate the above section on the grounds that disciplinary procedures are within the exclusive jurisdiction of the State Personnel Board. The state specifically offered to negotiate the cause of discipline, but refused to negotiate any other feature of discipline, including

procedures. DPA rested its refusal upon the California Constitution Article VII, section 3(a), which provides:

> The board shall enforce the civil service statutes and, by majority vote of all its members, shall prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions.

SPB, in an amicus brief, argued as well that the same Article VII brought disciplinary procedures within the exclusive jurisdiction of the SPB.

DPA excepts to the ALJ's finding that a disciplinary proposal that did not provide for full and complete SPB review of all decisions of an arbitrator was within the scope of bargaining. In effect, DPA does not except to the portion of the ALJ's decision holding that a disciplinary procedure calling for SPB review of an arbitrator's decision that is adverse to an employee is negotiable, or that discipline is not within the scope of bargaining. Rather, it objects to the second half of the same proposal, which does not provide for SPB review of an arbitrator's decision that is adverse to the employer. In its argument, DPA references the consolidated cases in State of California (1984) Decision No. HO-U-222-S. In that decision, the hearing officer found that a similar proposal, eliminating the role of the SPB in the instances where an arbitrator dismissed the disciplinary action, was not within the scope of representation:

> Under the proposed system the Personnel Board would be cut off from every disputed case where an arbitrator decided against the state. Because the procedure affords no method by which such matters could get before the Personnel Board the Board could not exercise its authority to "review disciplinary actions." (PERB Decision No. HO-U-222, at p. 58.)

DPA asks that the proposal made by PECG be declared outside the scope of representation because it does not provide for full and complete review of an arbitrator's decision by the SPB, but only provides for review under one circumstance. DPA is willing to arbitrate disciplinary procedures insofar as they do not contravene the review authority of the SPB.

Worth noting is that DPA does not ask PERB to overturn completely the ALJ's rationale for holding that the discipline provision proposed by PECG was negotiable. Rather, DPA asks that the Board reconcile the ALJ's decision in this case with the decision in HO-U-222-S.[6] PECG's proposal in this case and the proposal by the union in the earlier decision both involve use of an arbitrator for disciplinary disputes. Both proposals provided for SPB review of an arbitrator's decision only in the case of a decision adverse to an employee. To circumvent the constitutional provisions of Article VII, both proposals provide that if the arbitrator held against the state, the state could never formally file notice of the

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[6]The decision in that case was not appealed to the Board itself and is, therefore, binding only on the parties to that decision.

disciplinary action with the SPB, never bringing any such disciplinary action for the SPB to review.

The ALJ in this case approved of this system, but that system was rejected by another ALJ in the earlier case. That decision specifically noted that the action of the state in not filing disciplinary notices with the SPB, when it received an unfavorable determination from an arbitrator differs significantly from an approach where disciplinary action is contemplated or even taken by an appointing power, but then rescinded prior to any formal action and thus the matter never reaches the SPB. There is a world of difference between an employer who either changes its mind or who agrees in settlement to withdraw the disciplinary action, and the case proposed by PECG wherein the employer wishes to impose disciplinary action, indeed seeks to impose such action, but is prohibited from imposing that action because of an award of an arbitrator. In other words, in the former situation there is no disciplinary action for the SPB to review, because the employer wishes there be no disciplinary action. In the latter situation, however, there is no disciplinary action because an arbitrator has instructed there be no disciplinary action. Therefore, to comply with the requisites of Article VII of the Constitution, any provision that deals with discipline must provide for equal access to the SPB for both employer and employee.

Consequently, PECG's proposal, as it conflicts with the Constitution, is non-negotiable.

CONCLUSION

The proposals dealing with contracting out, layoffs, and discipline are non-negotiable. The proposals concerning work preservation and work performed during a job action are negotiable.

REMEDY

The appropriate remedy is a cease and desist order, and an order requiring DPA to negotiate proposals concerning work preservation and work performed during a job action. The employer shall also be required to post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of the State of California, indicating that it will comply with the terms thereof. The notice shall not be reduced in size, and shall be posted for a period of thirty (30) consecutive workdays.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the State of California (Dept, of Personnel Administration) has violated sections 3519(b) and (c) of the Ralph C. Dills Act. Pursuant to section 3514.5(c) of the Government Code, it is hereby ordered that the State of California and its representatives shall:

1. CEASE AND DESIST FROM:

a. Failing and refusing to meet and confer in good faith with the Professional Engineers in California Government with regard to proposals on assignment of bargaining unit work to employees outside the bargaining unit and, in the event of a strike by other employees, assignment of non-bargaining unit work to members of the bargaining unit.

b. By the same conduct, denying to the Professional Engineers in California Government rights guaranteed by the Ralph C. Dills Act, including the right to represent its members.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

a. Upon request, meet and confer in good faith with the Professional Engineers in California Government in respect to those subjects enumerated above to the extent they have been determined herein to be within the scope of representation.

b. Within five (5) workdays after this Decision is no longer subject to reconsideration, prepare and post copies of the Notice to Employees attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays at its headquarters offices and in conspicuous places at the location where notices to employees in the affected units are customarily posted. It must not be reduced in size and reasonable steps should be taken to see that it is not defaced, altered, or covered by any material.

c. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional Director of the Public Employment Relations Board in accordance with his instructions. All reports to the Regional Director shall be concurrently served on the charging party herein.

It is further ORDERED all other allegations in the charge and complaint are hereby DISMISSED.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. S-CE-125-S, Professional Engineers in California Government v. State of California (Department of Personnel Administration), in which all parties had the right to participate, it has been found that the State of California violated Government Code section 3519(b) and (c).

As a result of this conduct, we have been ordered to post this Notice, and will abide by the following. We will:

1. CEASE AND DESIST FROM:

a. Failing and refusing to meet and confer in good faith with the Professional Engineers in California Government with regard to proposals on assignment of bargaining unit work to employees outside the bargaining unit and, in the event of a strike by other employees, assignment of non-bargaining unit work to members of the bargaining unit.

b. By the same conduct, denying to the Professional Engineers in California Government rights guaranteed by the Ralph C. Dills Act, including the right to represent its members.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

a. Upon request, meet and confer in good faith with the Professional Engineers in California Government in respect to those subjects enumerated above to the extent they have been determined herein to be within the scope of representation.

Dated: _____ STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION)

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.